

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1789

Introduced by Assembly Member Morrell

February 21, 2012

An act to amend Section ~~512~~ of 2699 of, and to add Section 1182.2 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1789, as amended, Morrell. ~~Employment: meal periods. Wage orders: review: private rights of action.~~

Existing law regulates the wages, hours, and working conditions of any man, woman, and minor employed in any occupation, trade, or industry, whether compensation is measured by time, piece, or otherwise, except for individuals employed as outside salespersons and individuals participating in specified national service programs. Under existing law, the Industrial Welfare Commission within the Department of Industrial Relations is authorized to adopt rules, regulations, and orders to ensure that employers comply with those provisions of law.

This bill would require the commission to review and, if necessary, revise every wage order in effect as of January 1, 2013, to ensure that each order is consistent with current work conditions in the industry covered by that wage order. The commission would be required to indicate on its Internet Web site that an order has been reviewed and whether revision of the order is needed.

Existing law, the Labor Code Private Attorneys General Act of 2004, authorizes an aggrieved employee to recover through a civil action a civil penalty that would be assessed and collected by the Labor and Workforce Development Agency, as specified.

The bill would prohibit actions under the Labor Code Private Attorneys General Act of 2004 from being brought for a violation of a wage order until the wage order has been reviewed and, if revision is deemed necessary by the commission, revised.

~~Existing law requires an employer to provide an employee with one meal period during a work period of more than 5 hours and 2 meal periods during a work period of more than 10 hours, as prescribed.~~

~~This bill would make nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 1182.2 is added to the Labor Code, to*
2 *read:*

3 *1182.2. The commission shall review and, if necessary, revise*
4 *every wage order in effect as of January 1, 2013, to ensure that*
5 *each wage order is consistent with current work conditions in the*
6 *industry covered by the wage order. After a wage order has been*
7 *reviewed, the commission shall indicate on its Internet Web site*
8 *that the wage order has been reviewed and whether the wage order*
9 *needs to be revised.*

10 *SEC. 2. Section 2699 of the Labor Code is amended to read:*

11 2699. (a) Notwithstanding any other provision of law, any
12 provision of this code that provides for a civil penalty to be
13 assessed and collected by the Labor and Workforce Development
14 Agency or any of its departments, divisions, commissions, boards,
15 agencies, or employees, for a violation of this code, may, as an
16 alternative, be recovered through a civil action brought by an
17 aggrieved employee on behalf of himself or herself and other
18 current or former employees pursuant to the procedures specified
19 in Section 2699.3.

20 (b) For purposes of this part, “person” has the same meaning
21 as defined in Section 18.

22 (c) For purposes of this part, “aggrieved employee” means any
23 person who was employed by the alleged violator and against
24 whom one or more of the alleged violations was committed.

25 (d) For purposes of this part, “cure” means that the employer
26 abates each violation alleged by any aggrieved employee, the
27 employer is in compliance with the underlying statutes as specified

1 in the notice required by this part, and any aggrieved employee is
2 made whole.

3 (e) (1) For purposes of this part, whenever the Labor and
4 Workforce Development Agency, or any of its departments,
5 divisions, commissions, boards, agencies, or employees, has
6 discretion to assess a civil penalty, a court is authorized to exercise
7 the same discretion, subject to the same limitations and conditions,
8 to assess a civil penalty.

9 (2) In any action by an aggrieved employee seeking recovery
10 of a civil penalty available under subdivision (a) or (f), a court
11 may award a lesser amount than the maximum civil penalty amount
12 specified by this part if, based on the facts and circumstances of
13 the particular case, to do otherwise would result in an award that
14 is unjust, arbitrary and oppressive, or confiscatory.

15 (f) For all provisions of this code except those for which a civil
16 penalty is specifically provided, there is established a civil penalty
17 for a violation of these provisions, as follows:

18 (1) If, at the time of the alleged violation, the person does not
19 employ one or more employees, the civil penalty is five hundred
20 dollars (\$500).

21 (2) If, at the time of the alleged violation, the person employs
22 one or more employees, the civil penalty is one hundred dollars
23 (\$100) for each aggrieved employee per pay period for the initial
24 violation and two hundred dollars (\$200) for each aggrieved
25 employee per pay period for each subsequent violation.

26 (3) If the alleged violation is a failure to act by the Labor and
27 Workplace Development Agency, or any of its departments,
28 divisions, commissions, boards, agencies, or employees, there shall
29 be no civil penalty.

30 (g) (1) Except as provided in paragraph (2), an aggrieved
31 employee may recover the civil penalty described in subdivision
32 (f) in a civil action pursuant to the procedures specified in Section
33 2699.3 filed on behalf of himself or herself and other current or
34 former employees against whom one or more of the alleged
35 violations was committed. Any employee who prevails in any
36 action shall be entitled to an award of reasonable attorney's fees
37 and costs. Nothing in this part shall operate to limit an employee's
38 right to pursue or recover other remedies available under state or
39 federal law, either separately or concurrently with an action taken
40 under this part.

1 (2) No action shall be brought under this part for any violation
2 of a posting, notice, agency reporting, or filing requirement of this
3 code, except where the filing or reporting requirement involves
4 mandatory payroll or workplace injury reporting.

5 (3) *No action shall be brought under this part for a violation*
6 *of a wage order adopted by the commission that is in effect on*
7 *January 1, 2013, until the wage order has been reviewed, and, if*
8 *the commission determines the wage order needs to be revised,*
9 *until the effective date of any revision.*

10 (h) No action may be brought under this section by an aggrieved
11 employee if the agency or any of its departments, divisions,
12 commissions, boards, agencies, or employees, on the same facts
13 and theories, cites a person within the timeframes set forth in
14 Section 2699.3 for a violation of the same section or sections of
15 the Labor Code under which the aggrieved employee is attempting
16 to recover a civil penalty on behalf of himself or herself or others
17 or initiates a proceeding pursuant to Section 98.3.

18 (i) Except as provided in subdivision (j), civil penalties
19 recovered by aggrieved employees shall be distributed as follows:
20 75 percent to the Labor and Workforce Development Agency for
21 enforcement of labor laws and education of employers and
22 employees about their rights and responsibilities under this code,
23 to be continuously appropriated to supplement and not supplant
24 the funding to the agency for those purposes; and 25 percent to
25 the aggrieved employees.

26 (j) Civil penalties recovered under paragraph (1) of subdivision
27 (f) shall be distributed to the Labor and Workforce Development
28 Agency for enforcement of labor laws and education of employers
29 and employees about their rights and responsibilities under this
30 code, to be continuously appropriated to supplement and not
31 supplant the funding to the agency for those purposes.

32 (k) Nothing contained in this part is intended to alter or
33 otherwise affect the exclusive remedy provided by the workers'
34 compensation provisions of this code for liability against an
35 employer for the compensation for any injury to or death of an
36 employee arising out of and in the course of employment.

37 (l) The superior court shall review and approve any penalties
38 sought as part of a proposed settlement agreement pursuant to this
39 part.

(m) This section shall not apply to the recovery of administrative and civil penalties in connection with the workers' compensation law as contained in Division 1 (commencing with Section 50) and Division 4 (commencing with Section 3200), including, but not limited to, Sections 129.5 and 132a.

(n) The agency or any of its departments, divisions, commissions, boards, or agencies may promulgate regulations to implement the provisions of this part.

~~SECTION 1. Section 512 of the Labor Code is amended to read:~~

~~512. (a) An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived.~~

~~(b) Notwithstanding subdivision (a), the Industrial Welfare Commission may adopt a working condition order permitting a meal period to commence after six hours of work if the commission determines that the order is consistent with the health and welfare of the affected employees.~~

~~(c) Subdivision (a) does not apply to an employee in the wholesale baking industry who is subject to an Industrial Welfare Commission wage order and who is covered by a valid collective bargaining agreement that provides for a 35-hour workweek consisting of five 7-hour days, payment of one and one-half times the regular rate of pay for time worked in excess of seven hours per day, and a rest period of not less than 10 minutes every two hours.~~

~~(d) If an employee in the motion picture industry or the broadcasting industry, as those industries are defined in Industrial Welfare Commission Wage Order Numbers 11 and 12, is covered by a valid collective bargaining agreement that provides for meal periods and includes a monetary remedy if the employee does not~~

1 receive a meal period required by the agreement, the terms,
2 conditions, and remedies of the agreement pertaining to meal
3 periods apply in lieu of the applicable provisions pertaining to
4 meal periods of subdivision (a) of this section, Section 226.7, and
5 Industrial Welfare Commission Wage Order Numbers 11 and 12.

6 (e) ~~Subdivisions (a) and (b) do not apply to an employee~~
7 ~~specified in subdivision (f) if both of the following conditions are~~
8 ~~satisfied:~~

9 (1) ~~The employee is covered by a valid collective bargaining~~
10 ~~agreement.~~

11 (2) ~~The valid collective bargaining agreement expressly provides~~
12 ~~for the wages, hours of work, and working conditions of~~
13 ~~employees, and expressly provides for meal periods for those~~
14 ~~employees, final and binding arbitration of disputes concerning~~
15 ~~application of its meal period provisions, premium wage rates for~~
16 ~~all overtime hours worked, and a regular hourly rate of pay of not~~
17 ~~less than 30 percent more than the state minimum wage rate.~~

18 (f) ~~Subdivision (e) applies to each of the following employees:~~

19 (1) ~~An employee employed in a construction occupation.~~

20 (2) ~~An employee employed as a commercial driver.~~

21 (3) ~~An employee employed in the security services industry as~~
22 ~~a security officer who is registered pursuant to Chapter 11.5~~
23 ~~(commencing with Section 7580) of Division 3 of the Business~~
24 ~~and Professions Code, and who is employed by a private patrol~~
25 ~~operator registered pursuant to that chapter.~~

26 (4) ~~An employee employed by an electrical corporation, a gas~~
27 ~~corporation, or a local publicly owned electric utility.~~

28 (g) ~~The following definitions apply for the purposes of this~~
29 ~~section:~~

30 (1) ~~“Commercial driver” means an employee who operates a~~
31 ~~vehicle described in Section 260 or 462 of, or subdivision (b) of~~
32 ~~Section 15210 of, the Vehicle Code.~~

33 (2) ~~“Construction occupation” means all job classifications~~
34 ~~associated with construction by Article 2 (commencing with~~
35 ~~Section 7025) of Chapter 9 of Division 3 of the Business and~~
36 ~~Professions Code, including work involving alteration, demolition,~~
37 ~~building, excavation, renovation, remodeling, maintenance,~~
38 ~~improvement, and repair, and any other similar or related~~
39 ~~occupation or trade.~~

- 1 ~~(3) “Electrical corporation” has the same meaning as provided~~
- 2 ~~in Section 218 of the Public Utilities Code.~~
- 3 ~~(4) “Gas corporation” has the same meaning as provided in~~
- 4 ~~Section 222 of the Public Utilities Code.~~
- 5 ~~(5) “Local publicly owned electric utility” has the same meaning~~
- 6 ~~as provided in Section 224.3 of the Public Utilities Code.~~

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